

No. 23-55805

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

VIRGINIA DUNCAN, ET AL.,
Plaintiffs and Appellees,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant and Appellant.

**On Appeal from the United States District Court
for the Southern District of California**
No. 3:17-cv-01017-BEN-JLB
The Honorable Roger T. Benitez, Judge

**DEFENDANT-APPELLANT’S UNOPPOSED MOTION FOR A
14-DAY EXTENSION OF TIME TO FILE REPLY BRIEF**

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December 22, 2023

MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF

Pursuant to Ninth Circuit Rule 31-2.2(b), Attorney General Rob Bonta respectfully requests a 14-day extension of time in which to file a reply brief, up to and including January 25, 2024. The Attorney General has not previously requested an extension of time in this appeal. *See* Declaration of Mica L. Moore (“Moore Decl.”), ¶ 3. Plaintiffs-Appellees do not oppose the Attorney General’s request for additional time. *Id.* at ¶ 7.

This case involves a constitutional challenge to California’s restrictions on large-capacity firearm magazines, codified in California Penal Code section 32310. The district court issued an order permanently enjoining enforcement of Section 32310 on September 22, 2023. After the Attorney General appealed, the Clerk entered a Time Schedule Order requiring the opening brief to be filed by November 21, the answering brief to be filed by December 21, and the optional reply brief to be filed within 21 days of the answering brief (*i.e.*, January 11, 2024). Dkt. 1. The Court later indicated that oral argument before the en banc panel would take place the week of March 18, 2024, and it maintained the deadlines in the prior Time Schedule Order. Dkt. 12; *see* Dkt. 1. Consistent with that Order, the Attorney General filed his opening brief on November 21 and plaintiffs filed their answering brief on December 21. Moore Decl. ¶ 2.

The Attorney General now seeks a modest extension of the time to file the reply brief, to and including January 25, 2024. Moore Decl. ¶ 3. An extension of time may be granted “upon written motion supported by a showing of diligence and substantial need.” Ninth Cir. R. 31-2.2(b); *see also* Fed. R. App. P. 26(b) (“For good cause, the court may extend the time prescribed by these rules or by its order to perform any act[.]”). Counsel for the Attorney General have worked diligently on this appeal, including by drafting and filing the opening brief without seeking any extension, and beginning work on the reply brief immediately upon receiving plaintiffs’ answering brief. Moore Decl. ¶ 6. Under the particular circumstances here, however, there is a substantial need for a two-week extension of the deadline for the reply brief.

Because the answering brief was filed on December 21, the standard 21-day period for drafting and filing the reply brief will be interrupted by the Christmas and New Year’s holidays, and some of the attorneys who will be involved in the preparation or review of the reply brief will be unavailable for portions of that period due to scheduled leave and travel plans. Moore Decl. ¶ 4. What is more, the attorneys principally responsible for drafting the reply brief will also be working—at the same time—on the Attorney General’s reply brief in *Miller v. Bonta*, No. 23-2979, a related appeal concerning California’s restrictions on assault weapons. *Id.* The answering brief in that appeal is due on December 22, and the

reply brief is due on January 8, 2024—a deadline that cannot realistically be extended because the argument in that case is scheduled for January 24. *Id.* Counsel will need to devote substantial time and resources to finalizing the reply brief in *Miller* at the same time that they are working on the reply brief in this case. *Id.* In addition, counsel has been notified that at least five amicus briefs will be filed in support of the plaintiffs in this case. Moore Decl. ¶ 5. Those briefs are due by December 28, 2023, and reviewing those filings and responding to them (if necessary) will consume additional time and resources. *Id.*

This case involves important questions of constitutional law with implications for Second Amendment litigation throughout the Ninth Circuit. A two-week extension would better enable the preparation of a reply brief that would be most helpful to the en banc Court in its resolution of those questions. At the same time, this extension would ensure that this appeal will be fully briefed by January 25, 2024—more than six weeks before the Court is scheduled to hear oral argument. The Attorney General does not intend to seek any further extensions. Moore Decl. ¶ 6.

For the foregoing reasons, the Attorney General respectfully requests a 14-day extension of the reply brief deadline.

Dated: December 22, 2023

Respectfully submitted,

/s/ Mica L. Moore

ROB BONTA

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**DECLARATION OF MICA L. MOORE IN SUPPORT OF MOTION
FOR EXTENSION OF TIME TO FILE REPLY BRIEF**

I, Mica L. Moore, declare:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am employed as a Deputy Solicitor General by the California Department of Justice, Office of the Attorney General. I am an attorney of record for the Attorney General in the above-captioned matter, and I have personal knowledge of the facts stated in this declaration.

2. Consistent with the Court's Time Schedule Order, the Attorney General filed his opening brief in this appeal on November 21, 2023, and plaintiffs' answering brief was filed on December 21, 2023. Under the Order, the Attorney General's reply brief is currently due on or before January 11, 2024.

3. On behalf of the Attorney General, I am requesting a 14-day extension of the reply brief deadline, up to and including January 25, 2024. The Attorney General has not previously sought an extension in this appeal.

4. The standard 21-day period for drafting and filing the reply brief will be interrupted by the Christmas and New Year's holidays. Some of the attorneys who will be involved in preparing or reviewing the reply brief will be unavailable for portions of that period due to scheduled leave and travel plans. In addition, the attorneys who are principally responsible for drafting the reply brief in this appeal will need to devote substantial time and resources to finalizing the reply brief in

Miller v. Bonta, No. 23-2979, a related appeal concerning California's restrictions on assault weapons. The answering brief in *Miller* is due on December 22, and the Attorney General's reply brief is due on January 8, 2024. The Attorney General does not intend to seek an extension of the *Miller* reply brief deadline, because oral argument has been scheduled in that case for January 24, 2024.

5. In addition, I have been informed that at least five amicus briefs will be filed in support of the plaintiffs in this case. Those briefs will be due by December 28, 2023. Reviewing the briefs and responding to them (if necessary) will require additional time and resources.

6. Counsel for the Attorney General have worked diligently on this appeal, including by drafting and filing the opening brief without seeking any extension, and beginning work on the reply brief immediately upon receiving plaintiffs' answering brief. Counsel will continue to exercise diligence in working on the Attorney General's reply brief, which will be filed within the requested time. The Attorney General does not intend to seek any further extensions.

7. On December 22, 2023, I contacted Plaintiffs-Appellees' counsel to inform them that the Attorney General would be seeking a 14-day extension of the reply brief deadline. Counsel informed me that Plaintiffs-Appellees do not object to the requested extension.

8. There is no issue of court-reporter default with regard to any designated transcripts.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California, on December 22, 2023.

/s/ Mica L. Moore
Mica L. Moore

CERTIFICATE OF SERVICE

I certify that on December 22, 2023, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 22, 2023

/s/ Mica L. Moore

Mica L. Moore